82-1839

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ZELVERN W. MANN, ADMINISTRATOR OF THE ESTATE OF ADA CREWS MANN, DECEASED, PETITIONER

v.

RICHARD GOLD, M.D., JOSHUA LEVY, M.D., JOHN CARLSON, M.D., BERNARD STROHM, ADMINISTRATOR UCLA HOSPITAL & CLINICS, ANDREA CRACCHIOLO III M.D., STANLEY CASSAN, M.D., RESPONDENTS;

DAVID H. CANTER, LISA CARL, DALE GOLDFARB, individually, DAVID H. CANTER, sole corporation, Lisa Carl sole corporation, HARRINGTON, FOXX, DUBROW & CANTER a legal partnership; JOSEPH A. WAPNER; DAVID N. EAGLESON, JUDGE, JOHN COLE, JUDGE, PETER S. SMITH, JUDGE, RESPONDENTS.

CONSOLIDATED FOR HEARING

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Kenneth Crews Mann
Attorney at Law,
Member of the Bar
of this Court

Bruce Ogden Mann
Attorney at Law

P. O. Box 5350
Sherman Oaks, CA 91413
(213) 906-2266

ATTORNEYS FOR PETITIONER.

May, 1983

QUESTIONS PRESENTED

Mann v. Gold

1. Whether state hospital doctors and administrators acted under color of law, violating decedent's civil rights under Title 42 USCA section 1983, by concealing decedent's broken neck, not treating her neck but keeping her drugged, using state and federal money to experiment on her, damaging her spinal cord so that she died.

2. Whether a patient drugged by a state hospital to conceal her broken neck has the civil rights action of a prisoner under 42 USC §1983.

3. Whether the district and appellate courts can ignore case law, Halet v. Wend, requiring the Court in a Rule 12(b)(1) dismissal motion to take as true the allegations of Petitioner's complaint.

4. Whether the district court on a subject matter jurisdiction question can assess attorney fees without making findings.

5. Whether the appellate court can ignore its own decisions and Supreme Court case law in the district court's opinion in affirming the district court.

6. Whether the Supreme Court case, Polk County v. Dodson, misinterpreted by the district court as controlling jurisdiction in this case, requires not only that certiorari be granted but that this case be remanded to the district court for a trial on the merits.

Mann v. Canter

7. Whether the U. S. Supreme Court decision Polk County v. Dodson modifies this Court's decision in Dennis v. Sparks so as to remove the district court's jurisdiction over private attorneys after the judicial defendants have been granted immunity.

8. Whether a retired judge charged with violation of California Government Code sections 6200, 6201, felonious taking of a

court file from a courthouse to deprive the Petitioner of his civil rights to due process in conspiracy with private attorneys, has any immunity from district court jurisdiction under Dennis v. Sparks.

9. Whether trial and appellate courts can ignore U. S. Supreme Court and Ninth Circuit rulings, as well as federal magistrate ruling in this case of good cause for discovery of third party witnesses.

10. Whether a retired judge appointed as a "special master" is still required to come to a deposition after dismissal on grounds of Dennis v. Sparks "immunity".

11. Whether county judges and a retired judge have absolute judicial immunity justifying Rule 12(b)(1) dismissal without carrying the burden Dennis v. Sparks requires where the complaint alleges private meetings of judges and attorneys to make decisions in advance of court hearings, with subornation

of perjury of court reporter to cover up private meeting with judge in a § 1983 case.

12. Whether district federal trial court and Ninth Circuit appellate court can ignore U. S. Supreme Court and Ninth Circuit rulings and competent evidence presented by Petitioner which created triable issues, then dismiss and affirm dismissal of Petitioner's case under Title 42 U.S.C. section 1983, for deprivation of Petitioner's Constitutional rights.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases: Page

Constitution, statutes, and regulation: Page

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No.

ZELVERN W. MANN, ADMINISTRATOR OF THE ESTATE OF ADA CREWS MANN, DECEASED, PETITIONER

v.

RICHARD GOLD, M.D., et al., RESPONDENTS

and

DAVID H. CANTER, etc., et al., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Kenneth Crews Mann and Bruce Ogden Mann, Attorneys, on behalf of Zelvern W. Mann, Administrator of the Estate of Ada Crews Mann, Deceased, petition for a writ of certiorari to review the judgments of the United States Court of Appeals for the Ninth Circuit in these consolidated companion cases: Ninth Circuit Nos. 82-5110, Gold and 82-5182, Canter; District Court Nos. CV 81-5461R and CV 81-4689.

OPINIONS BELOW

Neither of the opinions of the Ninth Circuit is reported; neither of the opinions of the Central District Court is reported. The Ninth Circuit opinions bearing the instructions "DO NOT PUBLISH" are attached as APPENDIX A. The orders denying rehearing in banc are attached as APPENDIX B.

JURISDICTION

The memorandum opinions in these consolidated cases were filed November 10, 1982 (APPENDIX A pages 36 through 40.) Petitions for rehearing in banc timely filed by Petitioner were denied by order of the Ninth Circuit Court of Appeals February 10, 1983 (APPENDIX B pages 41 through 42.) The judgments affirming the appeal decisions were served on the District Court and counsel February 22, 1983 (APPENDIX C pages 43 through 46.) Jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the United States Constitution provides in relevant part:

> Section 1, Due Process of Law
>
> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

2. Title 42 U.S.C.A. section 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, usage of any State . . . subjects or causes to be subjected, any citizen of the United States, within the jurisdiction of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress . . . .

STATEMENT OF THE CASE

Within the three-year statute of limitations available to Title 42 USA section 1983 actions in California, Petitioner brought suit in federal court to obtain damages including pain and suffering damages experienced by the decedent which are unavailable in state court but are available in federal court to obtain an enhanced recovery, and an early recovery for the Estate of Ada Crews Mann, deceased. Petitioner, as the duly appointed administrator of decedent's estate had a mandatory duty under California Probate Code sections 573 and 578a to recover estate assets, and pain and suffering damages under the authority of Guyton v. Phillips (1981) 606 F.2d 248, not available in state courts.

Defendants, state hospital doctors acted under color of state law, violating the civil rights of Ada Crews Mann by

conspiracy with state hospital administrator concealing the fact of decedent's broken neck which had occurred November 1, 1977 in a fall in said state hospital, but using state and federal money to experiment on her against her will, keeping her drugged, damaging her spinal cord so that she died March 26, 1979.

The District Court dismissed on defendants' Rule 12(b)(1) motion claiming there was no action by the state hospital doctors and administrator under color of law, that therefore there was no civil rights subject matter jurisdiction. The defendants moved for attorney fees which were granted by the district court without making findings required under Supreme Court decisions and Ninth Circuit decisions, and the Ninth Circuit Court of Appeals affirmed, ignoring both U. S. Supreme Court and Ninth Circuit precedent. Petitioner petitioned the Ninth Circuit Court for rehearing en banc within jurisdictional time limit, but the Ninth

Circuit Court denied the petition for a rehearing en banc on February 10, 1983.

In September, 1981, the Petitioner discovered substantial evidence of civil rights violations taking place against him as administrator of the estate of his deceased wife Ada Crews Mann and his sons, heirs, which included private meetings between certain Los Angeles Superior Court judges, a retired judge Joseph A. Wapner, who had been repeatedly reappointed as a discovery referee by non-judicial acts, over Petitioner's objections, in violation of California Code of Civil Procedure section 638, in violation of Bird v. Superior Court (1980) 112 Cal.App.3d 595, a deprivation of Petitioner's right to due process; these private meetings included judges, Joseph Wapner, and private attorneys to agree in advance to rule in defendants' favor at later court hearings. Petitioner discovered a document on defendant attorneys' paper

which admitted in writing to one of these private meetings of judges and attorneys, and found that the court reporter to the actual hearing had falsified the date of the hearing so as to enable defendant attorneys to claim that the secret meeting with the judge was not secret but that it had taken place with the reporter, that the true hearing date was not reported. By a simple check of the Superior Court register, it was readily learned that the register showed the true hearing date of April 17, 1980, with the reporter named as having reported that date, not the secret meeting of April 16, 1980, the day before the hearing.

Another secret meeting was covered up by defendant Judge Peter Smith by leaving out of his minute order any reference to the fact that in said secret meeting, without notice to Petitioner, he cancelled Petitioner's depositions and agreed to keep original medical records of the decedent in his chambers, denying access to Petitioner.

August 21, 1981, defendant attorneys and Judge Smith were so blatant in their conspiracy that they neglected to have the court reporter discontinue her notes when the regular noticed matters of that date were completed; defendant attorney Lisa Carl began to suggest the judge join with her in taking the original medical records to keep them away from Petitioner's noticed records deposition set for August 31, 1981, which defendants did not attend.

Included in the actions violating the civil rights of the petitioner was Joseph Wapner's secret, felonious taking of the state court file out of the courthouse, keeping it out of sight for over nine months, preventing the case coming to trial.

When defendants cancelled the early trial obtained by Petitioner under California Code of Civil Procedure section 36 in the state court, Petitioner brought suit in the federal court for violation of his civil rights.

Defendants went so far as to suborn perjury of the court reporter to get him to make a false declaration dated December 31, 1981, again lying and claiming the April 17, 1980 hearing was not on April 17, 1980, but on April 16, 1980, so that defendants could cover up their written admission of the secret meeting with the judge. The corrupt actions of the defendants carried over into the federal case, and it was dismissed after the federal court held that with the dismissal of the state judges and retired judge for judicial immunity, the private attorney defendants were not acting under color of law, that the Court had no jurisdiction of the subject matter. The federal court supported that position by claiming the U. S. Supreme Court deciaion Polk County v. Dodson overruled Dennis v. Sparks. The defendants moved twice for attorney fees which were denied by the trial court. Petitioner appealed; the Ninth Circuit affirmed, with rehearing denied on February 10, 1983.

REASONS FOR GRANTING THIS PETITION

1. On petition to the United States Supreme Court, these consolidated cases squarely present questions of action under color of state law: by state hospital doctors and administrator; and by private attorneys in conspiracy with state judges and retired judge, in deprivation of Petitioner's civil rights protected under the Fourteenth Amendment Due Process clause and the Eighth Amendment proscription against cruel and unusual punishment applicable to states under the Fourteenth Amendment. This petition also brings to the attention of this Supreme Court the failure of the district trial court and the Ninth Circuit Court of Appeals to follow not only precedents established by this Supreme Court but Ninth Circuit holdings. Legal authority for granting this petition is: Monroe v. Pape (1961) 365 U.S. 167, 5 L.Ed. 492, 81 S.Ct. 473, in which this court granted a writ of certiorari in an action for violation

of the federal Civil Rights Act, section 1983 of Title 42, because of the seeming conflict in the court of appeals ruling affirming dismissal of the complaint with the United States Supreme Court's prior cases. Willingham v. Morgan (1969) 395 U. S. 402, 23 L.Ed. 396, 89 S.Ct. 1813, in which the Supreme Court granted certiorari to consider whether the court of appeals whose opinion was in apparent conflict with at least three other court of appeals' decisions erroneously decided the removal question with respect to a suit by a federal prisoner against a warden and medical officer at the prison.

Since these cases came before the Supreme Court from a dismissal on jurisdictional grounds, see F.T.C. v. Dean Foods Co. (1966) 384 U.S. 597, 16 L.Ed.2d 802, 86 S.Ct. 1738, which held that the allegations of the Federal Trade Commission's application for a preliminary injunction must be taken as true.

2. On petition to the United States Supreme Court, Mann v. Gold squarely presents this question: Whether state hospital doctors and administrator act under color of state law, within the meaning of 42 USC §1983. Polk County v. Dodson (1981) 454 U.S. 312, 102 S.Ct. 445, at 450, 451, 453, makes an exception for state hospitals and state administrators, leading Petitioner to believe other justices will join Justice Blackmun in his dissent in Polk's state hospital context and find color of law or state action by the state hospital defendant doctors and administrator. Polk County wrestled with the problem of whether state employees act under color of law, and the question is by no means put to rest. For the six-page dissent by Justice Blackmun, one page less than the majority opinion by Justice Powell, awaits only the proper case. Justice Blackmun's dissent fits Petitioner's facts on all fours:

> When a full-time state employee, working in an office fully funded and extensively regulated by the State and acting to fulfill a state obligation, violates a person's constitutional rights, the Court consistently has held that the employee acts "under color of" state law, within the meaning and reach of 42 U.S.C. §1983. Because I conclude that the Court's decision in this case is contrary to its prior rulings on the meaning of "under color of" state law, and because the Court charts new territory by adopting a functional test in determining liability under the statute, I respectfully dissent.
>
> I
>
> The Court holds for the first time today that a government official's "employment relationship" is no more than a "relevant factor" in determining whether he acts under color of state law within the meaning of §1983. *Ante*, at 451.

Polk County v. Dodson, 102 S.Ct. at 455.

Noting that Polk County v. Dodson is a public defender case and not a hospital case, the Ninth Circuit reliance upon it to dispense with the attaching of color of law to the defendant state hospital administrator and doctors is misplaced and misapprehends the law in Polk County v. Dodson, a reason for granting this petition.

3. Petitioner has alleged custodial incarceration and reliance on Estelle v. Gamble (1976) 429 U.S. 97, 50 L.Ed. 251, 97 S.Ct. 285. At 429 U.S. 102, the Court considered the constitutional prohibition of the Eighth Amendment, citing In re Kemmler, 136 U.S. 436, 447, 10 S.Ct. 930, 933, 34 L.Ed. 519 (1980)("Punishments are cruel when they involve torture or a lingering death . . .").

Petitioner's complaint describes acts of defendants, experimental operations without the consent of decedent while she was drugged (CT 1, p. 11, lines 1-28; CT 1, p. 13, lines 1-28), alleged the conscious conspiracy to kill decedent with intentional acts done for that purpose, acts which weakened decedent to maintain her in defendants' custodial control. Complaint, P. 11, lines 1-28:

> . . . and concealed the broken neck from decedent, from her husband, administrator . . . failed to warn . . . that death was substantially certain to follow.

> . . . Defendants abandoned decedent and refused to treat her broken neck at all times, but did perform numerous operations on her body not related to correction of her broken neck, and did monitor her broken neck, by taking secret cervical x-rays of it during January, 1978, and September, 1978 and charged Medicare over $235,000 for . . . medical procedures not related to correction of her broken neck. . . .
>
> Page 13, lines 1-28, Petitioner's complaint:
>
> . . . So battered her body during September, 1978 . . . without any protection to her neck . . . jostling to her body resulted in further impingement upon the lower brain stem and spinal cord, causing paralysis to Ada Crews Mann; . . . ordered and caused to be administered . . . Demoral and Haldol, breathing depressants, so as to drug her, so as to prevent her communicating her fears and neck pains to the plaintiff . . . defendants and each of them . . . determined to hasten the death of Ada Crews Mann . . .

The U. S. Supreme Court in Estelle continued describing its more recent cases in which it has held that the "[Eighth] Amendment proscribes more than physically barbarous punishments, at page 102 of the Estelle opinion, citing Greg v. Georgia(1976) 428 U.S. 123, 169-173, and other cases:

> The Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . .," *Jackson v. Bishop*, 404 F.2d 571, 579 . . .

The U. S. Supreme Court concluded at page 104 of Estelle:

> We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain," *Gregg v. Georgia, supra.*, at 182-183, 96 S.Ct. at 2925 (joint opinion) proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to prisoner's needs . . .

In line with the Estelle opinion, and distinguishing the public defender subject of its opinion from a state hospital, the Court stated in Polk County v. Dodson (1981) 102 S.Ct. 445 at 450:

> Unlike a lawyer, the administrator of a state hospital owes no duty of "undivided loyalty" to his patients. On the contrary, it is his function to protect the interest of the public as well as that of his wards. Similarly, *Estelle* involved a physician who was the medical director of the Texas Department of Corrections and also the chief medical officer of a prison hospital. He saw his patients in a custodial as well as medical capacity.
>
> Because of their custodial and supervisory functions, the State-employed doctors in *O'Connor* and *Estelle* faced their employer in a very different posture than does a public defender.

> Institutional physicians assume an obligation to the mission that the State, through the institution, attempts to achieve.
>
> Polk County v. Dodson, 102 S.Ct. 450.

There is no substantive difference between a jailor and prison doctor killing one of their patients and a state hospital administrator and his state hospital doctors killing one of their public Medicare patients while wrongfully confining her by use of drugs and assaults preventing her leaving the confinement of the hospital while taking steps to insure her death from the broken neck, experimenting upon her body while she is still alive, the "unnecessary and wanton infliction of pain" quoted from Gregg, supra, in Estelle, supra.

If a question of fact exists as to whether or not Ada Crews Mann was confined against her will after her neck was broken, was made a prisoner by drugs, then even on summary judgement that issue could not be decided, but once recognized, requires a trial on the merits.

Although Estelle holds that mere allegations of malpractice do not state a § 1983 claim, it holds that deliberate indifference to serious medical needs does offend evolving standards of decency in violation of the Eighth Amendment. Even more should the deliberate concealment of decedent's broken neck, alleged by Petitioner, offend evolving standards of decency.

Honorable Chief Justice Burger in Specht v. Patterson (1967) 386 U.S. 605, 608, 87 S.Ct. 1209, 1211, 18 L.Ed.2d 326, states:

> There can be no doubt that involuntary commitment to a mental hospital like involuntary confinement of an individual for any reason is a deprivation of liberty which the state cannot accomplish without due process of law.

O'Connor v. Donaldson (1975) 422 U.S. 563, states:

> Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was, because even if his voluntary confinement was initially permissible it could not constitutionally continue after that basis no longer existed. (*Jackson v. Indiana*, 406 U.S. at 738, 92 S.Ct. at 1858).

Here, after Ada Crews Mann's neck was broken, unnecessary operations performed experimentally on her, and she was drugged to conceal her condition, her confinement could not constitutionally continue, while defendant state doctors and administrator continued to experiment on her while she was dying from the broken neck.

Holmes v. Silver Cross Hospital of Joliet, Illinois (D.C., Ill., 1972) 340 F.Supp. 125 is cited in 14 C.J.S. Civil Rights Supplement, Section 124 Hospitals and Similar Institutions:

> We believe that the initial issue is easily resolved once we have determined that the hospital may be deemed to have been involved in state action. If they acted as agents of the entity charged with state action, the doctors clearly must take upon their shoulders all the responsibilities that their principal possesses, particularly when as here the principal is incapable of executing any action whatsoever except through use of agents. Under this theory therefore, the doctors act under color of state law so far as Section 1983 is concerned, whenever they act under the express direction and as agents of the hospital. When they are so acting they are bound by the same constitutional restraints that are upon the hospital.

Polk County, supra., was limited by this Court to its facts, and this Court recognized the hospital-employee-doctor exception, 102 S.Ct. 451, distinguishing the state hospital doctors of O'Connor and Estelle from the public defender of Polk County.

Furthermore, Ada Crews Mann, drugged, with her malfunctioning hip replacement pulled out of its socket somehow in the state hospital, with her broken neck concealed from her and from Petitioner, had no say whatsoever as to who treated her or for what treatment and was unable to stop the experimentation done by some fifty-six state doctors at this state teaching hospital. Said doctors, as alleged, were paid by public funds from the State and Federal Government for all of the some $235,000 of medical experimentation done on Ada Crews Mann while she lay dying, drugged in their custody and control.

4. This Court's attention is directed to the fact that the district trial court made no findings of fact and conclusions of [6] law detailing the basis for the award of $5,000 in attorney fees against the petitioner for bringing this action, in direct violation of the Supreme Court decision in Hughes v. Rowe (1980) 101 S.Ct. 173, and the Ninth Circuit Court of Appeals holding in Cohn v. Papke (1981) 655 F.2d 191. In Cohn:

> In the event that the trial court in a civil rights action brought under section 1983 decides to grant attorney fees to the defendants, the trial court should make findings of fact and conclusions of law detailing the basis for the decisions.

In Hughes v. Rowe, 499 us at 14:

> The fact that a plaintiff may ultimately lose his case is not in itself a sufficient jusitification for the assessment of fees. As we stated in Christiansburg: . . . Hence a plaintiff should not be assessed his opponents' attorney fees unless a court finds that his claim was frivolous, unreasonable, or groundless or that the plaintiff continued to litigate after it clearly became so; 434 U.S. at 422, 98 S.Ct. at 701.

And at page 16 of Hughes v. Rowe:

[6] See APPENDIX D, docket.

> Allegations that upon careful examination prove legally insufficient to require a trial are not for that reason alone, groundless or without foundation as required by Christianburg.

The District Court made no findings in the Petitioner's case as the record shows. See APPENDIX D, docket in Mann v. Gold.

The Ninth Circuit Court of Appeals in its memorandum opinion affirming the district court decision ignores its own requirement of findings and seems to hold that it is only a matter of discretion at the trial court level, that findings are not needed at all.

It is submitted that the trial judge and the appeals court ignored the reuqirement of this Supreme Court for findings because they knew that they could not justify the $5,000 attorney fees award with findings. In fact, the Blackmun dissent in Polk County shows that the question of state action, acts under color of state law, is a close one, and poor plaintiffs such as Petitioner, believing in the ideals of civil rights and equity juris-

diction of the federal courts to enforce them, are deceived by such reduction of Supreme Court requirements for findings to simply a matter of subjective discretion on the part of the trial judge and appeals court. If that is what Hughes v. Rowe really says, then it is a sorry commentary upon the Constitutional precepts upon which this nation was founded.

5. The district court judge and the Ninth Circuit Appellate Court misapplied Polk County v. Dodson (1981), supra; and ignored: Dennis v. Sparks (1980), 449 U.S. 24, 66 L.Ed.2d 185, 101 S.Ct. 183; Rankin v. Howard (CA 9th 1981) 633 F.2d 844, cert. denied 101 S.Ct. 2020; Beard v. Udall (CA 9th 1981) 648 F.2d 1264; in dismissing private attorney defendants who were in a corrupt conspiracy and symbiotic relationship with the State, Los Angeles Superior Court judge defendants and retired judge,

claiming that after dismissing the judicial defendants, notwithstanding the symbiotic relationship and corrupt conspiracy, the case cannot continue in federal court against the remaining private defendant attorneys, since after dismissal of their judicial conspirators, the private attorneys are not considered to have acted under color of law.

The district judge and Ninth Circuit Court of Appeals misapplied this Supreme Court's decision in Polk County v. Dodson, supra., a case which does not apply to private attorneys in a Dennis v. Sparks conspiracy, and denied Petitioner all discovery in derogation of rights sustained by this Court in Dennis v. Sparks and discovery allowed in all federal cases of third-party witnesses.

Beard v. Udall (CA 9th 1981), supra, holds:

> This [Rankin] conclusion[1] followed from the fact that a party expects judicial impartiality in dealing with a judge; thus, if a judge connives with one of the parties to predetermine the outcome of a judicial proceeding, the other parties' expectations are frustrated. Moreover, the court noted an agreement by a judge to predetermine the outcome of a proceeding is 'not a function normally performed by a judge.' Id. Even though the judge's disposition of the proceeding remains a judicial act, under Rankin the prior agreement is deemed the essential cause of any deprivation of federally protected rights. Accordingly, the judge may be liable for damages due to the deprivation. Id. at [633 F.2d] 847-48 and n.9.

Also, see footnote 6 in Beard v. Udall:

> . . . The fact that Stump involved only allegations of wrongful acts taking place in the courtroom, while Rankin involved alleged activity outside the courtroom is one ground for distinguishing the results in the two cases. However, even activity that takes place in a courtroom can sometimes be considered non-judicial. See e.g. Gregory v. Thompson 500 F.2d 59, 63 (CA 9) (judge does not enjoy immunity for assault committed in courtroom). See also Zarcone v. Perry 572 F.2d 52 (CA 2nd 1978).

---

[1]The Ninth Circuit Court of Appeals held in Rankin v. Howard (1981) 633 F.2d 844 that a judge does not enjoy judicial immunity if the judge's actions were either non-judicial or taken in clear absence of all jurisdiction.

All arguments that judicial immunity carries over to private attorneys corruptly conspiring with the judicial defendants are met by the rule in Dennis v. Sparks, supra, that state action can be found on the part of private attorneys even though the state official involved is immune from damages. At 449 U.S. 27, 101 S.Ct. 186, the reason for granting the petition for certiorari is given,[2] then the reason for reversal of the court below:

> As the court of appeals correctly understood our cases to hold, to act under color of state law for § 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons jointly engaged with state officials in the challenged action, are acting "under color of law" for purposes of § 1983 actions. [citations]

It is significant that the facts of Petitioner's case are parallel to those of Dennis. Addition-

---

[2] "Because the judgment below was inconsistent with the rulings of other courts of appeal and involves an important issue, we granted the petition for certiorari. 445 U.S. 942, 100 S.Ct. 1336, 68 L.Ed.2d 775. We now affirm.

ally, there are Rankin agreements, as defined in Beard v. Udall, supra, and footnote 9, that the prior agreement is deemed the essential cause of any deprivation of federally protected rights; that accordingly the judge may be liable for damages due to the deprivation.

In Petitioner's case, the Ninth Circuit Court of Appeals and the district judge ignored the non-judicial prior agreements not only alleged but proved by direct and circumstantial evidence, looking only at the later judicial act. Petitioner's right of action under 42 U.S.C. § 1983, established by Rankin and supported by Dennis was completely ignored by the courts below. They also ignored the right to discovery established by Dennis.

6. Magistrate Kronenberg ruled October 30, 1981 (APPENDIX E) that Petitioner had good cause to depose referee Joseph A. Wapner and Deputy County Clerks who could establish the felonious taking by retired, former presiding judge Wapner

of the court file, a non-judicial, corrupt and criminal act. Wapner's stealing and keeping the case file of Mann v. Cracchiolo, NWC 76789, for over nine months prevented Petitioner, then aged 75, taking his case to trial; this corrupt act was by prior agreement with defendant attorneys. Wapner's stealing the file violated California Government Code sections 6200 and 6201, having the same result as the corrupt injunction caused by bribery in Dennis.

In Dennis, this Court ruled discovery proper,[3] as Magistrate Kronenberg of the district court ruled; but Judge Manuel Real overruled Magistrate Kronenberg, and the Ninth Circuit, ignoring Dennis, affirmed this denial of Petitioner's discovery.

7. The district court and the Ninth Circuit Court of Appeals ignored the non-judicial prior agreements, not only alleged but proved by direct and circumstantial evidence, looking only at the

[3] The Supreme Court held that although a judge might be immune from damages he could be called to testify about his judicial conduct in third party litigation. 101 S.Ct. at 188, 449 U.S. at 30.

later judicial act. The courts below completely ignored Petitioner's right of action under 42 U.S.C. § 1983, established by Rankin and supported by Dennis.

7.a. Petitioner has a written admission against interest of defendant attorneys to a secret prior meeting with Judge John Cole on April 16, 1980, where they persuaded him to agree to rule against Petitioner at the later court hearing April 17, 1980, which he did. By suborning perjury of the court reporter, defendant attorneys caused him to date the notes of the court hearing of April 17, 1980 as April 16, 1980[4] trying to cover their written admission of their secret meeting with Judge Cole. It was the secret prior meeting of April 16, 1980 where defendant attorneys persuaded Judge Cole to rule for them that was the violation of Petitioner's constitutional rights that was a non-judicial act under Rankin.

---

[4]Kenneth Crews Mann, attorney for Petitioner, proved in the district court to Judge Real that he could not have been in the Los Angeles Superior Court April 16, 1980 because he was 25 miles away at a deposition in Revere vs. Sir Speedy. Judge Cole did not deny 4/16/80 meeting. *Also see APPENDIX F, state register for 4/17/80.*

7.b. A $1,000 bribe was paid to Joseph Wapner on or about July 27, 1981. In an attempt to cover the payment, Mr. Wapner stepped outside of any claim to immunity as a referee by calling Petitioner's attorney's law office, acting as a defendant attorney, complaining that K. C. Mann and his secretary were liars, that the wife of K. C. Mann could not understand English.[5] The petitioner had completed a deposition in December, 1979 and was in Northern California on vacation; his unilaterally scheduled deposition for July 31, 1981, then for July 27, 1981, was cancelled, due to his absence, as Mr. Wapner admitted to Mrs. Mann on the telephone. But defendant attorneys and retired judge Wapner had agreed in advance of July 27, 1981 to pretend they were going to have a deposition anyway as a way of covering the payment to Joseph Wapner.

---

[5]Dragon Deposition Service recorded the telephone conversation in which Joseph Wapner admitted he had cancelled the July 27, 1981 deposition. Mrs. Mann told him the telegram saying depositions would go forward was "ambiguous" whereupon Joseph Wapner said, "**Maybe you can't read English.**" (Mrs. Mann has a Master's of Arts degree in English.)

7.c. On August 21, 1981 Judge Peter Smith corruptly agreed after a noticed hearing had concluded and the court reporter continued to take notes, with defendant attorney Lisa Carl to deprive Petitioner of original medical records he had subpoenaed for a deposition. Judge Smith told Lisa Carl to bring the records to him. She did; she did not come to the medical records deposition of August 31, 1981. Judge Smith tried to cover his corrupt act of August 21, 1981 by not having any reference to it in the minute order for that day. If it had not been for the court reporter's transcript, Petitioner might never have discovered this corrupt act.

7.d. By a prior out-of-court agreement, another non-judicial act, "referee" Wapner agreed with attorney David Canter and Lisa Carl to lie to Presiding Judge Eagleson of the Los Angeles Superior Court, claiming Petitioner's attorney had assaulted Lisa Carl on August 27, 1981 at the attorney's deposition. Whereas, the reporter transcript of the deposition involved

showed that, on the contrary, the assault was done by David Canter upon Kenneth Crews Mann, Petitioner's attorney. Further evidence adduced to the district court showed that at an earlier time, when Joseph Wapner and Lisa Carl had a chance to make the claim about the assault with the presiding judge on the telephone August 27, 1981, they did not mention it. The lie was corruptly agreed to between them and used on August 28, 1981 in Los Angeles Superior Court to try to gain further advantage in the state action, Mann v. Cracchiolo, NWC 76789.

7.d. On August 31, 1981, an in-chambers agreement was made between Lisa Carl and "referee" Wapner after Petitioner's attorney Kenneth Crews Mann had left the court after waiting for thirty minutes for a deposition which defendants refused to start. Then, on their corrupt prior agreement, they caused their court reporter to prepare a false record discussing the case, out of Petitioner's presence, perjuring themselves. The transcript

of that corrupt hearing was in evidence, and affidavits from Petitioner's witnesses raised triable issues of fact.

7.e. Other corrupt acts of defendant attorneys and judges were: (1) The second autopsy on the neck bones of Petitioner's decedent, with no notice to Petitioner, in June, 1981. This autopsy was arranged in secret meetings between Joseph Wapner, Judge Peter Smith, and defendant attorneys. Petitioner only learned this second, secret autopsy had taken place four months later, on reading defendant attorneys' cost bill. (2) Defendant attorneys and Joseph Wapner agreed outside of court to hold an important deposition of Petitioner's expert four hours before the scheduled time, so that Petitioner would not come to the deposition prior to it being adjourned, depriving Petitioner of his right of cross-examination and rehabilitation. Later, defendant attorneys misrepresented to the state court what had been said at that deposition of Petitioner's expert witness.

8. The Supreme Court has held in Saunders v. Shaw (1917) 37 S.Ct. 638, 244 U.S. 317, 61 L.Ed. 1163:

> State procedural rulings cannot be found to be independent of a claim that the procedural rulings themselves cause a denial of due process.

The allegations of Petitioner's federal complaint in Mann v. Canter, filed in September, 1981, show how Petitioner's due process rights were repeatedly violated by State court procedural rulings.

9. The district court dismissed both Mann v. Gold and Mann v. Canter after weighing the evidence in violation of legal principles requiring a trial where triable issues exist. Further evidence of the conflict in the Ninth Circuit is the recent case of Whiteside v. State of Washington (D.C. Wash., 1982) 534 F.Supp. 774, holding that a judge may not enjoy immunity of his actions were taken either in clear absence of all juris-

diction or if his acts were non-judicial in nature. But Judge Manuel Real evidenced a complete misapprehension of the issues in Petitioner's cases, confusing the facts and the cases, claiming that Petitioner was suing the private attorney defendants for legal malpractice and that Polk County v. Dodson prevented this. Then Judge Real of the federal district court dismissed both cases under Federal Rule of Civil Procedure Rule 12(b)(1) for lack of subject matter jurisdiction. The Ninth Circuit affirmed, ignoring its own holding in Halet v. Wend (CA 9th 1982) 672 F.2d 1305, which requires the Appeals Court and the trial court to take as true, the allegations of plaintiff's complaint on a Rule 12(b)(1) dismissal:

> On a motion to dismiss, the court presumes that the facts alleged by plaintiff are true.

CONCLUSION

The petition for a writ of certiorari should be granted. Respectfully submitted May 10, 1983. KENNETH CREWS MANN, ATTORNEY
Member of the Bar of this Court

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SELVERN W. MANN, Plaintiff-Appellant, vs. RICHARD GOLD, M.D., JOSHUA LEVY, M.D., JOHN CARLSON, M.D., BERNARD STROHM, ADMINISTRATOR, UCLA HOSPITAL AND CLINICS, ANDREA CRACCHIOLO III, M.D., and STANLEY CASSAN, M.D., Defendants-Appellees.	NO. 82-5110 D.C. NO. CV 81-5461 R MEMORANDUM

Submitted -- November 3, 1982

Appeal from the United States District Court
for the Central District of California
Honorable Manuel Real, District Judge, Presiding

Before: GOODWIN, HUG and BOOCHEVER, Circuit Judges.

The appellant is the administrator of his wife's estate. The decedent allegedly died as a result of mistreatment and neglect by the staff of UCLA Hospital. Appellant brought a state court action for medical malpractice, which resulted in a summary judgment in favor of the defendants. Appellant then brought this action under 42 U.S.C. § 1983. The district court dismissed for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. The district court also awarded attorney's fees to the defendants. We affirm the dismissal on jurisdictional grounds and the award of attorney's fees.

APPENDIX A

Appellant contends that the district court erred in concluding that the defendant did not act under color of state law. Appellant's contention reduces to this: The defendants acted under color of state law because they were state employees. This precise contention was recently rejected by the Supreme Court in Polk County v. Dodson, 102 S.Ct. 445 (1981). Appellant's reliance on Estelle v. Gamble, 429 U.S. 97 (1976) and O'Connor v. Donaldson, 422 U.S. 563 (1975) is misplaced. In both of those cases, the state hospitals were custodial.

42 U.S.C. § 1988 allows a district court, in its discretion, to grant a reasonable attorney's fee to the "prevailing party" in a section 1983 case. In Hughes v. Rowe, 449 U.S. 5 (1980) (per curiam), the Supreme Court held that a defendant may recover his attorney's fees from the plaintiff only if the district court finds that the plaintiff's action was frivolous, unreasonable, or without foundation. Applying this standard, the district court was within its discretion in granting attorney's fees in this case.

The judgment of the district court is AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 09 1992

PHILLIP B. WINEBERRY
CLERK, U.S. COURT OF APPEALS

ZELVERN W. MANN, Administrator of the Estate of ADA CRESS MANN, deceased, Appellant, v. RICHARD GOLD, M.D., JOSHUA LEVY, M.D., JOHN CARLSON, M.D., BERNARD STROHM, ADMINISTRATOR, UCLA HOSPITAL AND CLINICS, ANDREA CRACCHIOLO III, M.D., and STANLEY CASSAN, M.D., Appellees.	No. 82-5110 D.C. No. CV 81-5461 R O R D E R

The memorandum disposition in the above-entitled case is amended by changing that portion of the caption relating to the appellant to read:

ZELVERN W. MANN, Administrator of the Estate of ADA CRESS MANN, deceased,

Appellant,

The remainder of the caption remains as in the original.

38

APPENDIX A

NOV 12 1982

DO NOT PUBLISH

FILED

NOV 10 1982

PHILLIP B. WINSERR
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZELVERN W. MANN,	NOS. 82-5182
Plaintiff-Appellant,	82-5195
	D.C. NO.
vs.	
DAVID H. CANTER, LISA CARL, DALE GOLDFARB, individually, DAVID H. CANTER, sole corporation, LISA CARL, sole corporation, HARRINGTON, FOXX, DEBROW & CANTER, a legal partnership; JOSEPH A. WAPNER; DAVID N. EAGLESON, judge, JOHN COLE, judge, ELI CHERNOW, judge, PETER S. SMITH, judge,	MEMORANDUM
Defendants- Appellees.	

Submitted -- November 3, 1982

Appeal from the United States District Court
For the Central District of California
Honorable Manuel Real, District Judge Presiding

Before: GOODWIN, HUG and BOOCHEVER, Circuit Judges.

Appellant is the administrator of his deceased wife's estate. Appellant brought suit in the state court for wrongful death due to medical malpractice, which concluded in a summary judgment in favor of the defendants. Appellant filed suit in the federal court pursuant to 42 U.S.C. § 1983, alleging that various state court judges, a retired state court judge acting as a discovery referee, the state court defendants' lawyers and their law firm conspired to wreck appellant's state court action. The judicial defendants, including the discovery referee, were dismissed on the basis of judicial immunity. The attorney defendants were

39

APPENDIX A

granted summary judgment and a dismissal on the basis that they did not act under color of state law. The district court properly dismissed the judicial defendants and granted summary judgment in favor of the attorney defendants, and we therefore affirm the judgment of the district court.

Judges are entitled to absolute immunity against § 1983 suits so long as they perform judicial acts and do not act in clear absence of all jurisdiction. Dennis v. Sparks, 449 U.S. 24 (1980), Stump v. Sparkman, 435 U.S. 349 (1978). The discovery referee is also immune when acting as an aide to a judge and performing judicial acts in place of the judge. Gravel v. United States, 408 U.S. 606 (1972).

Rule 56(e) of the Federal Rules of Civil Procedure provides that when a motion for summary judgment is supported by affidavits, plaintiff may not rest upon the mere allegations of his pleading, but must respond with affidavits or otherwise setting forth specific facts showing that there is a genuine issue for trial. The attorney defendants specifically denied any bribery, conspiracy, concealment, or secret meetings. For the most part, appellant has not responded at all to these specific denials. Where appellant has responded by affidavit, he has used facts beyond the affiant's personal knowledge or otherwise incompetent or inadmissible matters. The district court properly concluded that there were no triable issues of fact.

Federal Rules of Civil Procedure 56(f) allows a judge discretion to order a continuance of a motion for a summary judgment while depositions are taken. However, the district judge was within his discretion in refusing discovery prior to granting summary judgment in this case where it is difficult to envision how the depositions requested would have yielded any admissible evidence which would have contradicted the specific denials of the attorney defendants.

40 A

Appellees' motion for damages and double costs pursuant to Federal Rules of Appellate Procedure No. 38 is granted because the appeal is frivolous. Appellees are awarded double costs plus damages in the amount of $500.

The judgment of the district court is AFFIRMED.

40B

39

APPENDIX B

FILED

FEB 10 1983

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZELVERN W. MANN, Administrator of the Estate of ADA CREWS MANN, deceased,

Appellant,

v.

RICHARD GOLD, M.D., JOSHUA LEVY, M.D., JOHN CARLSON, M.D., BERNARD STROHM, ADMINISTRATOR, UCLA HOSPITAL AND CLINICS, ANDREA CRACCHIOLO III, M.D., and STANLEY CASSAN, M.D.,

Appellees.

No. 82-5110

D.C. No. CV 81-5461 R

O R D E R

Before: Judges GOODWIN, HUG and BOOCHEVER

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

United States Circuit Judge

APPENDIX B

FILED

FEB 14 1983

PHILLIP B. WINDSOR
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZELVERN W. MANN, Administrator of the Estate of ADA CREWS MANN, deceased,	)	Nos. 82-5182
	)	82-5195
Appellant,	)	
v.	)	O R D E R
DAVID H. CANTER, LISA CARL, DALE GOLDFARB, individually, DAVID H. CANTER, sole corporation, LISA CARL, sole corporation, HARRINGTON, FOXX, DEBROW & CANTER, a legal partnership; JOSEPH A. WAPNER; DAVID N. EAGLESON, judge, JOHN COLE, judge, ELI CHERNOW, judge, PETER S. SMITH, judge,	)	
Appellees.	)	

Before: Judges GOODWIN, HUG and BOOCHEVER

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

Robert Boochever

United States Circuit Judge

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ZELVERN W. MANN, Administrator of the Estate of Ada Crews Mann, deceased

Plaintiff(s)

vs

RICHARD GOLD, M.D., JOSHUA LEVY, M.D., JOHN CARLSON, M.D., BERNARD STROHM, ADM., ETC., ET AL.

Defendant(s)

CASE NUMBER

CV 81-3461 MLR

FILED

FEB 22 1983

NOTICE OF HEARING ON FILING AND SPREADING JUDGMENT OF COURT OF APPEALS (CIVIL)

To:

Kenneth Crews Mann, Esq.
P.O. Box 116
Van Nuys, CA. 91408

Patty Mortl, Esq.
HARRINGTON, FOXX, DUBROW & CANTER
One Wilshire Building
Los Angeles, CA. 90017

Bruce Ogden Mann, Esq.
25231 Paseo de Alicia
Laguna Hills, CA. 92653

PLEASE TAKE NOTICE that the judgment of the United States Court of Appeals, Ninth Circuit, having been received in the above-entitled case, this matter has been set for hearing on March 28, 1983 at 10:00 A.M. o'clock before the Honorable MANUEL L. REAL, United States District Judge, in Courtroom No. 14, United States Courthouse, 312 N. Spring Street, Los Angeles, California. It will not be necessary for all counsel to be present at that time.

EDWARD M. KRITZMAN, CLERK

Dated: FEBRUARY 22, 1983

By: Deputy Clerk

43

Cfv 42 (11/76) NOTICE OF HEARING ON FILING AND SPREADING JUDGMENT OF COURT OF APPEALS

APPENDIX C

JUDGMENT

United States Court of Appeals
FOR THE NINTH CIRCUIT

ZELVERN W. MANN, Administrator of the Estate of ADA CREWS MANN, deceased,

Plaintiff/Appellant,

vs.

RICHARD GOLD, M.D., JOSHUA LEVY, M.D., JOHN CARLSON, M.D. BERNARD STROHM, ADMINISTRATOR, etc., et al.,

Defendants/Appellees.

FEB 1[illegible] 1983

No. 82-5110

DC CV.81-5461 MLR

APPEAL from the United States District Court for the Central District of California

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California

and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

A TRUE COPY
ATTEST
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS
Clerk of Court
by: [signature]
Deputy Clerk

Filed and entered November 09, 1982

44

APPENDIX C

41

APPENDIX C

JUDGMENT

United States Court of Appeals

FOR THE NINTH CIRCUIT

FEB 14 1983

ZELVERN W. MANN,

Plaintiff-Appellant,

vs.

DAVID H. CANTER, et al.,

Defendants-Appellees.

No. 82-5182
82-5195

D.C.# CV 81-4689 MLRL

APPEAL from the United States District Court for the CENTRAL District of CALIFORNIA

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the CENTRAL District of CALIFORNIA

and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is AFFIRMED

A TRUE COPY
ATTEST
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS
Clerk of Court
by: Billy Miller
Deputy Clerk

Filed and entered NOVEMBER 10, 1982

45

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED

LVERN W. MANN Plaintiff(s) vs VID H. CANTER, ET AL., Defendant(s)	CASE NUMBER FEB 22 1983 CV 81-4689 MRI NOTICE OF HEARING ON FILING AND SPREADING JUDGMENT OF COURT OF APPEALS (CIVIL)

To: Kenneth Crews Mann, Esq.
P.O. Box 116
Van Nuys, CA. 91408

Patty Mortle, Esq.
HARRINGTON, FOXX, DUBROW & CANTER
624 S. Grand Ave,
Ste. 703
Los Angeles, CA. 90017

Bruce Ogden Mann, Esq.
25231 Paseo De Alicia
Laguna Hills, CA. 92653

Lester J. Tolnai, Esq.
Deputy County Counsel
648 Hall of Administration
500 W. Temple St.
Los Angeles, CA. 90012

PLEASE TAKE NOTICE that the judgment of the United States Court of Appeals, Ninth Circuit, having been received in the above-entitled case, this matter has been set for hearing on March 28, 1983 at 10:00 A.M. o'clock before the Honorable MANUEL L. REAL, United States District Judge, in Courtroom No. 14, United States Courthouse, 312 N. Spring Street, Los Angeles, California. It will not be necessary for all counsel to be present at that time.

EDWARD M. KRITZMAN, CLERK

Dated: FEBRUARY 22, 1983

By: _____
Deputy Clerk

46

OFF.	YR.	DOCKET NUMBER	FILING DATE MO. DAY YR.	J	N/S	D / R	$ DEMAND (nearest $1,000)	JUDGE/ MAG. NO.	COUNTY	JURY DEM.	YR.	DOCKET NUMBER
								7316				

TITLE:

CAUSE:

VERN W. MANN, Administrator
the Estate of Ada Crews Mann,
eased,

Plaintiff,

HARD GOLD, M.D., JOSHUA LEVY,
., JOHN CARLSON, M.D., BERNARD
OIM, ADMINISTRATOR U.C.L.A.
PITAL AND CLINICS; ANDREA
CCHIOLO III, M.D., STANLEY
GAN, M.D.,

Defendants.

91401

Kenneth Crews Mann
P.O. Box 116
Van Nuys 91408

D

CHECK HERE IF WAS IN THIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				85 47	
				86	

APPENDIX D

D STATES DISTRICT COURT DOCKET

DC 111 (Rev. 7/80)

CV81-5461-R/AWT(Rx) Z.W. MANN vs R. GOLD, M.D., et al

10/22/81 kmb 1. Fld Cmplt. Issd summs.
Case may be referred to Mag Tassopulos for discvry.

11/12/81 cm 2. Fld ORD(R,AWT) transfrng actn to Manuel Real for all fur proceedings cc parties.

11-16-81 sb 3. Fld deft notc of motn & mton to dism actn retble 12-7-81 10am

11-18-81 sb 4. Fld retn summ serv to Stanley Cassan on 10-28-81
5. Fld retn summs serv to John Carlson M.D. on 11-5-81
6. Fld retn summs serv to Andrea Cracchiolo II M.D. on 11-9-81
7. Fld retn summs serv to Joshua Levy M.D. on 10-29-81
8. Fld retn summs serv to Richard Gold M.D. on 10-29-81
9. Fld retn summs serv to Bernard Strohm on 10-28-81

11-30-81 sb 10. Fld pltf opp to motn of deft to dism under Rule 12(b)(6) declar of cu dcft

12-3-81 sb 11. Fld deft reply to memo of P/A in suppt of motn to dism

12-7-81 sb 12. MIN ORD: crt grants the motn w/prej as to dism

12-10-81 sb LODGED ORD OF DISM

12-15-81 sb 13. Fld ORD(MLR) Dism actn w/prej (ENT12-17-81) MD JD & fld copy & notc

12-22-81 sb 14. Fld pltf/deft's BILL OF COSTS Retble 12-28-81 9am

12-22-81 sb 15. Fld deft notc of motn & motn to recvr atty fees' retble 1-18-82 10am

12-29-81 sb 16. Fld pltf opp to motn fr atty fees declar , P/A & exh

1-7-82 ew 17. Fld pltf's NOTC OF APPEAL to 9th Cir. C/A frm jdgmnt ent 12-17-81. $70.00 fldng & docket fees pd.

1-8-82 sb 18. Fld deft reply ot memo of P/A in suppt of motn recvr atty fees

1-11-82 sb 19. Fld supplemtnal reply to def mistaken Factual Statmnr contained in daft reply re atty fees
20. Fld pltf not cof change of mailing address fr all legal docs

1-19-82 gh 21. MIN ORD: deft motn recvr atty fess: crt granted deft motn & stay actn pening appeal

1-21-82 sb LODGED PROP ORD

1-18-82 sb 22. Fld pltf Transcript designation & ord form copy of record

1-25-82 sb 23. Fld ORD(R) deft motn to recvr atty fees in the amount of $4,972.00 granted award atty fees be stayed pending appeal

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES — GENERAL

Case No. CV 81 4689 WMB (Kx) Date Oct 30, 1981

Title Zelvern Mann et al. vs. David Canter, et al

DOCKET ENTRY

PRESENT:

HON. JOHN R. KRONENBERG, MAGISTRATE

Joyce Zenon
Deputy Clerk

Tape 660B/661A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Kenneth Mann
Bruce Mann

ATTORNEYS PRESENT FOR DEFENDANTS:

Patty Mortl
David Canter

PROCEEDINGS: DEFENDANT'S EX PARTE APPLICATION & MOTION FOR ORDER SHORTENING TIME TO REFER DEPOSITION TO A MASTER.

Court and counsel confer. Court grants defendant's motion for order shortening time however, denies motion for appointment of a master at this time. Good cause is not shown. The Court further orders that all requests for discovery shall, specify in addition to the matters required to be noticed by rules, who is to be present at the time deposition is taken and who will report it.

PROCEEDINGS: PLAINTIFF'S EX PARTE APPLICATION FOR AN ORDER FOR ATTACHMENT OF WITNESS FAILING TO ATTEND FOR TAKING OF DEPOSITION

The deposition of Lynn Stricklin is reset to Nov. 4, 1981 at 9:00 a.m. at 15760 Ventura Blvd., 10th floor, Encino, Calif. Those present should be Kenneth Mann, Bruce Mann, the deposing officer of David Izen & Associates. Other parties may be present with counsel and one or more of the parties, jointly, are permitted to have present 1 additional reporter to record proceedings. The above order pertains to the deposition of L. Stricklin to be held on 11/4/81, Joe Wapner, to be held on 11/6/81, Cleo Phelps and John Walker both to be held on 11/5/81.

All applications for fees or sanctions are denied at this time without prejudice.

Initials of Deputy Clerk

MINUTES FORM 11
CIVIL—GEN

APPENDIX E

6789

SUPERIOR COURT OF LOS ANGELES COUNTY

L Sartori 4/2/80 Dept [illegible] 10/3/80, 11/26/80

YEAR	MONTH	DAY		FILED DOC	FEES
80	Apr	3	Deft. A. Capacchiulo III M.D. not resp. Mot to Compel further ans. 4-17-80 9:00am D84		
80	Apr	17	Court motion off calendar [illegible] D84		
			Judge [illegible] to hear [illegible] D84		
80	Apr	11	[illegible]		
80	[illegible]	23	[illegible]		
80	[illegible]	30	Pltfs Amended [illegible] to Comp (2)		
80	[illegible]		[illegible]		
80	[illegible]	1	[illegible]		
80	Jul	30	Deft. [illegible] Ruth [illegible] [illegible] Demurrer, Demurr. to Comp 8-14-80 9AM Dept 84 ([illegible])		50.00
80	Jul	30	Deft [illegible] Mot to Strike 8-14-80 9AM Dept 84		
80	Aug	14	[illegible] O/C [illegible] court [illegible] D84		
80	Aug	22	[illegible]		
80	Sep	2	[illegible] Mtn [illegible] MD [illegible] to [illegible] 9-30-80 900 D84		
80	Sept	5	[illegible]		
80	Oct	20	[illegible] of Kenneth Carew Mann + Bruce Ogden Mann response to [illegible]		
80	Sep	30	Mo. Cont. 10-21-80 9 am D84		
80	Oct	21	[illegible] D84		
80	10	22	[illegible] 11-20-80 9 [illegible] D84		
80	10	17	[illegible] Demurrer of Deft [illegible]		
80	Oct	30	Pltfs Affidavit in support of [illegible]		
80	Nov	7	Deft [illegible] Mot for [illegible] Summary Judgt 12-3-80 9AM Dept 84		
80	Nov	12	[illegible] 12-3-80 900 D80		
80	Nov	12	[illegible]		
80	Nov	17	[illegible] Proof of Service (2)		
80	Nov	20	[illegible] D84		
80	Nov	21	[illegible] D80		
80	Dec	3	[illegible] D80		
80	Dec	3	[illegible] D84		
80	[illegible]	11	[illegible]		
80	[illegible]	18	[illegible]		
80	[illegible]	22	[illegible]		
80	Oct	16	[illegible] 170 (5)		

APPENDIX F

SUPREME COURT OF THE UNITED STATES

No._____

ZELVERN W. MANN vs. RICHARD GOLD, etc. and Administrator, etc. vs. DAVID H. CANTER

The Clerk will enter my appearance as Counsel of Record for Zelvern W. Mann, Administrator of the Estate of Ada Crews Mann, who in this Court is the Petitioner.

I certify that I am a member of the Bar of the Supreme Court of the United States:

Kenneth Crews Mann

Kenneth Crews Mann,
Attorney at Law
14542 Ventura Blvd., Suite 208A
Post Office Box 5350
Sherman Oaks, California 91413

Phone: (213) 906-2266

PROOF OF SERVICE

[F.R.C.P. Rules 19.3, 28.3]

I, Kenneth Crews Mann, one of the counsel of record for Zelvern W. Mann, Administrator of the Estate of Ada Crews Mann, hereby certify that, on the 10th day of May, 1983, I served one copy of the Petition for Writ of Certiorari on each of the two attorneys of record for the several parties thereto, as follows:

1. On the defendant doctors, Gold, et al., and the defendant attorneys Canter, et al., by mailing one copy in a duly addressed envelope, with first class postage prepaid to: Harrington, Foxx, Dubrow & Canter, One Wilshire Bldg., 7th Floor, Los Angeles, California 90017;

2. On the defendant state court judges and retired judge Wapner, by mailing one copy in a duly addressed envelope, with first class postage prepaid to: John Larson, County Counsel, Room 648 Hall of Administration, 500 West Temple, Los Angeles, CA 90012.

It is further certified that all parties required to be served have been served, and that the list of such parties is set forth in the caption of the Petition.

Kenneth Crews Mann

Kenneth Crews Mann, Attorney
P.O. Box 5350, Sherman Oaks, CA 91413